There is yet one final point of conflict in the rules of the different States on this question, and that is as to the point at which the title of the riparian proprietor ends and that of the State begins. Some courts hold that the riparian proprietor holds title to high-water mark.[14] Others extend his ownership to low-water mark.[15] This is somewhat of an arbitrary distinction and generally of little value to the owner of the land, although in some cases important and valuable rights might turn upon it, as in the case of minerals between high and law-water mark.

THE DOCTRINE OF THE "ATTRACTIVE NUISANCE," OR "TURNTABLE CASES."—A question which has often arisen and which has been the cause of a great deal of discussion and a sharp conflict of authority is that of the duty of a landowner to prevent injuries to trespassing children which result from their interference with dangerous machinery or other artificial improvements on his land. Many courts lay down the rule that a landowner is liable to children, even though trespassers, for injuries resulting from dangers specially created by the act of the owner, novel in character, attractive and dangerous to children, and easily guarded and rendered safe, provided he knows, or in the exercise of reasonable care, ought to have known, that they were dangerous and attractive to children. This has been called the doctrine of the "Attractive Nuisance," or, more generally, the doctrine of the "Turntable Cases," from the fact that the question has most frequently arisen in connection with injuries sustained by trespassing children while playing on a railroad turntable.

The doctrine seems to have been laid down first in the English case of *Lynch* v. *Nurdin*,[1] in 1841. It is a matter of grave doubt whether this case has been overruled or is still the law of England; in fact, the English law on the subject is so confused that it is difficult to say just what is the law on this subject. In 1909, however, in the first case involving a turntable accident which ever came before the English courts, the company was held liable on the ground of implied invitation.[2]

The first American case involving the doctrine came before the Supreme Court of the United States in 1873 and the court approved the doctrine.[3] Though the question has often arisen since that time,

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[14] Hohl *v.* Iowa Cent. Ry. Co., *supra;* Pacific Milling, etc., Co. *v.* City of Portland, *supra;* Woodcliff Land Imp. Co. *v.* N. J. Shore Line R. Co., *supra.*

[15] See Whitehead *v.* Cape Henry Syndicate, *supra.*

[1] 1 Q. B. 29. In this case the defendant left his horse and cart unattended in the street. The plaintiff, a boy of seven, was hurt while playing with the horse. The defendant was held liable for the injury.

[2] Cooke *v.* Midland Great Western Ry. Co. (1909), App. Cas. 229.

[3] Stout *v.* Sioux City and P. R. Co., 17 Wall. 657. In this case the plaintiff, a young boy, was injured while playing on the defendant's unguarded and unlocked turntable. The defendant was held liable on the ground that he impliedly invited the plaintiff.

it is impossible to state any general American rule governing the case. The courts of a number of jurisdictions have lined themselves up on one side or the other and show great tenacity in holding to their original view. In a majority of the States in which the question has arisen the courts have followed the Supreme Court of the United States in upholding the doctrine.[4] On the other hand a very respectable minority of the courts refuse to impose any liability on the landowner, on the ground that he owes no duty to trespassers except to refrain from intentional or wanton injury.[5]

Even the courts which adhere to the doctrine are not in unison as to the underlying principles which support it. The majority of them, however, base it on the ground that by constructing the attractive nuisance upon his land and leaving it in an open and unguarded condition, the landowner impliedly invites the child to come and play with it. They say that the temptation to the child is tantamount to an invitation. This seems open to the objection that all of these machines and improvements are introduced upon the land practically as necessities in the beneficial enjoyment of it, and always for purposes absolutely foreign to that of inviting children to play with them. Yet the courts maintain with a show of reason that from the point of view of the children the machines seem so fitting as instruments of amusement that their unguarded condition and the very ease with which access can be had to them, constitutes, as to the children, an implied invitation to make use of them as playthings. The example of this most often cited is the railroad turntable. Not only is a turntable usually built in a more or less populous community, but from its very nature and its resemblance to a merry-go-round it has a peculiar appeal to the childish instincts and imagination. The courts, i. e. those which uphold the doctrine, hold that a railroad in building such a machine as this in a populous community is charged with notice of the childish propensity to interfere with such things. But the courts do not stop here; they introduce another element; namely, the ease and slight cost with

[4] Barrett *v.* Southern Pac. R. Co., 91 Cal. 296, 27 Pac. 666, 25 Am. St. Rep. 186; Pierce *v.* United G. & E. Co., 161 Cal. 176, 118 Pac. 700; Edgington *v.* Burlington, C. R. & N. R. Co., 116 Iowa 410, 90 N. W. 95, 57 L. R. A. 561; Chicago, B. & Q. R. Co. *v.* Krayenbuhl, 65 Neb. 889, 91 N. W. 880, 59 L. R. A. 920; Hayes *v.* Southern Power Co., 95 S. C. 230, 78 S. E. 956; Brown *v.* Salt Lake City, 33 Utah 222, 93 Pac. 570, 14 L. R. A. (N. S.) 619; Ilwaco R. & Nav. Co. *v.* Hedrick, 1 Wash. 446, 25 Pac. 335, 22 Am. St. Rep. 169; Union Pac. R. Co. *v.* McDonald, 152 U. S. 262. In Sandern *v.* Tschider (C. C. A. 456), 205 Fed. 252, the plaintiff, a boy of eleven, was injured by exploding dynamite caps which a construction company left exposed and within his reach on their right of way, where he had seen them using similar explosives. The company was held liable for negligence.

[5] Daniels *v.* N. Y. & N. E. R. Co., 154 Mass. 349, 28 N. E. 283, 13 L. R. A. 248, 26 Am. St. Rep. 253; Wheeling & L. E. R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66, with good review and discussion of cases. In Pannill *v.* Richmond F. & P. R. Co., 105 Va. 226, 53 S. E. 113, 4 L. R. A. (N. S.) 80, the Virginia court rejected the turntable doctrine and suggested that legislative action was the proper remedy.

which such interference can be safeguarded against by the simple device of a lock. This tends to obscure the "allurement" or "invitation" theory and makes the doctrine more a practical matter of public policy. Hence it might almost be said that the question resolves itself into one of expediency, which is believed to be the true basis for the doctrine. "A balance must be struck between the benefit to the community of the unfettered freedom of owners to make a beneficial use of their land and the harm which may be done in particular instances by that freedom."[6] There has been a tendency of late to lay great emphasis on the question whether the owner should have foreseen or anticipated the attraction and the danger which the object would have for children.[7] And the age of the child is a fundamental consideration, of course, in every case. It is usually held that the doctrine applies only where the child injured is too young to be guilty of contributory negligence.[8] On the whole there are evidences in recent decisions of a disposition on the part of the courts to disregard technicalities and to look at the doctrine from the standpoint of public policy.[9]

But as soon as any liability is imposed the extent of application immediately arises and gives difficulty. The courts have perceived the danger in it and some of them have become almost panic-stricken in contemplation of the potentialities of the doctrine. It seems safe and reasonable, however, to allow the court some room for discretion in applying the rule. Could they not be trusted to apply a "rule of reason" in cases of this kind? In the recent case of *Barnhill* v. *Mt. Morgan Coal Co.*, 215 Fed. 608, the court, though approving the doctrine, showed a very commendable caution in applying it. In that case the defendant left a number of empty coal cars at the stop of a steep incline. They were set in motion by boys from 15 to 17 years of age and ran over and killed the plaintiff's intestate, a boy of ten. The plaintiff based his right of recovery on the turntable doctrine, but the court held that inasmuch as the cars were not, and could not have been, started by a child of tender years, such as the plaintiff's intestate, the company was not liable for the injury.

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[6] See Article by Judge Jeremiah Smith, 11 HARV. L. REV. 349, 360.

[7] McDermott *v.* Burke, 256 Ill. 401, 100 N. E. 168; Meyer *v.* Union, etc., Co., 151 Ky. 332, 151 S. W. 941.

[8] Ark. Valley Trust Co. *v.* McIlroy, 97 Ark. 160, 133 S. W. 816; Gregg *v.* King County (Wash.), 141 Pac. 340.

[9] "The landowner's liability bears a relation to the character of the thing, whether natural and common, or unnatural and uncommon, to the comparative ease or difficulty of preventing the danger without destroying or impairing the usefulness of the thing, and, in short, to the reasonableness and propriety of his conduct, in view of all the surrounding circumstances and conditions." Peters *v.* Bowman, 115 Cal. 356, 47 Pac. 599. See also, 11 HARV. L. REV. 349.